

## REMARKS

The specification and claims are edited to emphasize the claimed method of circulating warm or hot air and introducing a cold medium from a ceiling side of the booth.

The art does not disclose this combination of preamble and improvement of Jepson claim 1.

With a Jepson or improvement claim:

The terms in both the preamble describing the prior art and those elements constituting the improvement are substantive claim limitations. 37 CFR § 1.75(e). *Wells Mfg. Corp. v. Littlefuse, Inc.*, 192 USPQ 256 (7<sup>th</sup> Cir. 1976)

as remains the case. See, *MPEP* 2111.02.

The preamble requires stimulating a body in a warm or hot air booth with a cold medium. Both warm or hot air in a booth and a cold medium for stimulating the body in the booth are required.

The rejections of the claims (except claim 10) under 35 USC 112, second paragraph, are traversed as neither identified nor commensurate with the complexity of the subject matter. Claim 1, for example, requires a warm or hot air in a booth with cold medium improved by air-circulating and cold-introducing at a ceiling side of the booth. Both the preamble and improvement limits are clear. Nevertheless, claims are edited to address the rejections without narrowing so as to invoke Festo-like limitations even though in response to a statutory rejection, except as to the new limitation to the whole body.

The rejections under 35 USC 102 for anticipation by the cited Gerdes patent require every element claimed in the patent.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *MPEP* 2131 (citation omitted)

and such elements include both the preamble and the improvements of Jepson claim 1. While the Gerdes patent may disclose or suggest the improvement of circulating and cold medium introduction from the ceiling side of its booth, its booth is not the warm or hot air booth claimed with separate cold medium. At page 1, lines 75-78, the Gerdes patent discloses:

... the rapid stream of relatively cold air carries away the incipient sensible heat occurring at the area of impingement of the rays.

The patent discloses radiant heaters (16 in Fig. 1) in a cold air booth and not cold medium in a warm or hot air booth, as claimed.

At page 1, lines 72-75, of the patent, it is explained that:

The effect of this combination of operations [of cold air circulation and radiant heat] is that the degree of radiant heat may be employed which would otherwise be too painful ....

The teaching of the patent is, therefore, cold air in a booth and not the warm or hot air claimed. Therefore, the patent teaches away from the claims and the rejection cannot be converted into one under 35 USC 103 for obviousness therefrom. For obviousness:

**PRIOR ART MUST BE CONSIDERED IN ITS ENTIRETY, INCLUDING DISCLOSURES THAT TEACH AWAY FROM THE CLAIMS** *MPEP* 2141.02 VI (emphasis original)

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'WR Evans', written over a horizontal line.

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